IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 542 OF 2005

Vijay Chatrabhuj Jobanpra
& Ors. .. Appellants

VS.

Mr. Hitesh Manubhai Dave and ors. .. Respondents

Mr. P.J. Thorat h/f Mr. R.A. Thorat i/by Bipin Joshi for appellants.

Mr. K.P. Upadhyaya for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : June 29, 2005.

P.C.:

1. Heard Mr.P.J. Thorat h/f Mr. R.A. Thorat i/by Bipin Joshi the learned counsel for the appellants who are aggrieved by the order dated 30-3-2005 passed by the learned Judge of the City Civil Court at Mumbai in as much as the Notice of Motion in terms of prayer clauses (b), (c) and (d) has been allowed. The said prayer clauses read as under:-

(b) that pending the hearing of this suit, the Defendants be temporarily be restrained by an Order and injunction of this Honourable Court from storing any such articles and broken glass pieces, big stones and other such articles, goods etc., which the Defendants are storing at present in the open compound land at the suit property viz. Jeevram Motiram Wadi, Harbhanji Lane, Ghatkopar (East), Mumbai 400 077.

(c) that pending the hearing of the suit, the Defendants be directed to keep their ingress and egress reasonably clear from their respective premises to the Harbhanji Lane, as shown in the plan.

(d) that pending the hearing of the suit, the Defendants be directed to keep the iron gate abutting on the Harbhanji Lane, to keep it open and/or unlock the same at least during the day time for the easy ingress and egress of the plaintiffs, their respective family members.

2. As suggested during the course of the arguments, the appellants have submitted an undertaking in terms of which the Notice of Motion No.754 of 2005 can be disposed off. A copy of the said undertaking has already been handed over to the learned counsel for the plaintiffs.

3. Undertaking is hereby accepted and in addition it is directed that the main gate on which the defendants are allowed to have the security guard

posted shall remain open between 6 a.m. to 10 p.m. and at other times the guard will open the said gate as and when required for the ingress and egress of residents of the property i.e. Jeevram Motiram Wadi, Harbhanji Lane, Ghatkopar (East), Mumbai 400 077.

4. The arrangement made in terms of the undertaking and the additional directions as above would be equitable to the plaintiffs as well as defendants and, therefore, the Notice of Motion moved by the plaintiffs stands disposed off in terms of the undertaking and the additional directions given by this court. The impugned order stands modified accordingly. The appeal is disposed off accordingly.

(B.H. Marlapalle,J.)